

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kevin O'Connor (Int)	Team: Team # 2	CCRB Case #: 201403844	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 04/14/2014 5:40 PM	Location of Incident: Calyer Street and Manhattan Avenue	Precinct: 94	18 Mo. SOL 10/14/2015	EO SOL 10/14/2015	
Date/Time CV Reported Mon, 04/14/2014 8:36 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/22/2014 3:59 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Sean Walsh	02517	927656	INT CIS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Kelvin Puello	05111	939252	094 PCT
2. POM Nicos Georgiou	29207	915780	094 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Walsh	Abuse: Sgt. Sean Walsh authorized the stop of § 87(2)(b) and § 87(2)(b)	
B.SGT Sean Walsh	Force: Sgt. Sean Walsh used physical force against § 87(2)(b)	

Case Summary

On April 14, 2014, at approximately 5:40 p.m., § 87(2)(b) was walking with his friend, § 87(2)(b) along Manhattan Avenue in Brooklyn. Upon reaching the intersection of Manhattan Avenue and Calyer Street, the two men entered a delicatessen. After exiting, § 87(2)(b) and § 87(2)(b) were stopped by Sgt. Sean Walsh, Sgt. Kelvin Puello and PO Nicos Georgiou (**Allegation A**). § 87(2)(b) attempted to drink methadone from a small bottle he was carrying and was subsequently taken to the ground by Sgt. Walsh and placed in handcuffs (**Allegation B**). After being placed in handcuffs, Sgt. Walsh allegedly struck § 87(2)(b) once in the right eye with either his fist or an object (**subsumed within Allegation B**). § 87(2)(b) was transported to § 87(2)(b) and treated in the emergency room. He was diagnosed with an open face wound and received an unspecified number of sutures. § 87(2)(b) was placed under arrest for criminal § 87(2)(b), § 87(2)(a) 160.50 § 87(2)(b)

Mediation, Civil and Criminal Histories

This case was ineligible for mediation. § 87(2)(b) has not filed a Notice of Claim with the city in regard to this incident as of August 29, 2014, one-and-a-half months after the filing deadline (encl. 27). § 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by either § 87(2)(b) or § 87(2)(b) (encl. 4A-B).
- Sgt. Walsh has been a member of the service for 14 years. There are four CCRB complaints against him, containing six allegations of gun fired, physical force, threat of force, discourtesy and a stop. None of these allegations have been substantiated (encl. 3). § 87(2)(g)

Findings and Recommendations

Allegation A- Abuse of Authority: Sgt. Sean Walsh authorized the stop of § 87(2)(b) and § 87(2)(b)

It is undisputed that Sgt. Walsh had Sgt. Puello and PO Georgiou stop § 87(2)(b) and § 87(2)(b) so that he could conduct an investigation into their actions.

Sgt. Walsh stated that he observed § 87(2)(b) who he has debriefed after numerous narcotics and larceny related offenses, standing alone at the intersection of Manhattan Avenue and Greenpoint Avenue. § 87(2)(b) appeared to be “paranoid” and “anxious,” as he was constantly looking around and his face was flushed and red in color. § 87(2)(b) eventually met up with § 87(2)(b) and Sgt. Walsh followed the men from across the street as they walked along Manhattan Avenue. § 87(2)(b) who continually looked around and behind him, and § 87(2)(b) who did not exhibit any suspicious behavior, entered the USA Deli, located at the intersection of Manhattan Avenue and Calyer Street. The two men exited the store

several seconds after entering, a period of time in which Sgt. Walsh believed they could not have made a purchase.

Sgt. Walsh could not see inside the store while the men were inside, but suspected that § 87(2)(b) had engaged in a hand to hand drug transaction inside the store. Sgt. Walsh noted that in past experiences, individuals tend to enter locations where they cannot be seen and exit quickly after making a drug transaction. Neither § 87(2)(b) nor § 87(2)(b) had anything in their hands as they exited the store. Based on these observations, Sgt. Walsh called PO Georgiou and Sgt. Puello to have them stop § 87(2)(b) and § 87(2)(b) for him (encl. 15A-E).

In order to stop a person, a police officer must have reasonable suspicion that the person has committed, is committing, or is about to commit a crime. People v. Debour, 40 N.Y. 2d 210 (1976) (encl. 1A-K). Officers' knowledge of a defendant's prior criminality is not tantamount to an indication of criminal activity nor is it sufficient to give rise to reasonable suspicion justifying a level three intrusion. People v. Brown, 2014 N.Y. App. Div. (encl. 1L-Q). Reasonable suspicion may not be based on a vague or unparticularized hunch; The action of looking over one's shoulder several times is readily susceptible of an innocent as well as a guilty interpretation. People v. Moore, 176 A.D. 2d 297 (1991) (encl. 1Q-R).

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Sgt. Walsh did not observe § 87(2)(b) and § 87(2)(b) while they were in the store or see any indication that they carried any contraband. Sgt. Walsh based his suspicion that § 87(2)(b) and § 87(2)(b) had engaged in a hand to hand drug transaction inside the store on previous instances involving unrelated individuals in addition to § 87(2)(b)'s previous narcotics related arrests, § 87(2)(g)

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Allegation B-Force: Sgt. Sean Walsh used physical force against § 87(2)(b)

It is undisputed that Sgt. Walsh was involved in taking § 87(2)(b) to the ground after he was stopped. The level of § 87(2)(b)'s resistance and the degree of force used by Sgt. Walsh during the incident are in dispute.

§ 87(2)(b) stated that after being pushed against the wall by Sgt. Walsh, he pulled his arms away from Sgt. Walsh and asked why he was being stopped. § 87(2)(b) began to feel sick and took out his methadone bottle. § 87(2)(b) attempted to drink from the bottle and in the process spilled some of it on Sgt. Walsh, who then allegedly tripped § 87(2)(b) onto the ground, causing the left side of § 87(2)(b)'s face to hit a subway grate.

Sgt. Walsh then allegedly got on top of § 87(2)(b) and instructed him to place his hands behind his back. § 87(2)(b) initially did not comply, but did so after being told a second time. This was the only instance of physical resistance § 87(2)(b) stated he put forth during his arrest. After § 87(2)(b) was placed in handcuffs, Sgt. Walsh, who was still on

top of § 87(2)(b) allegedly struck him once in the right eye with either his fist or an object. § 87(2)(b) immediately began to bleed and sustained a black eye as a result. § 87(2)(b) was uncooperative with the CCRB investigation, but stated to the Internal Affairs Bureau that he observed Sgt. Walsh punch § 87(2)(b) twice in the face while he was on top of him (encl. 10A-B).

§ 87(2)(b) stated that he was taken to § 87(2)(b) after the incident and received three or four stitches to his right eye. According to § 87(2)(b)'s Prehospital Care Report, his chief complaint was that he was punched in the eye by an officer. § 87(2)(b) told hospital staff at § 87(2)(b) that he was assaulted by a police officer. § 87(2)(b) was diagnosed with an open face wound and received sutures. § 87(2)(b)'s arrest photo shows a black eye under his right eye and a cut to his right eyebrow.

Sgt. Walsh stated that upon being stopped, § 87(2)(b) refused to remove his hands from his pockets and PO Georgiou attempted to pull them out. When this was unsuccessful, § 87(2)(b) pulled away from PO Georgiou and nearly dragged him into the street. Sgt. Walsh ran to the scene and yelled at § 87(2)(b) to remove his hands, but he did not comply. Sgt. Walsh decided that § 87(2)(b) needed to be handcuffed for the officers' safety and grabbed one of § 87(2)(b)'s arms while PO Georgiou grabbed the other. § 87(2)(b) took out one of his hands to drink from his methadone bottle. As a result of the momentum in pulling § 87(2)(b)'s arms, Sgt. Walsh, PO Georgiou and § 87(2)(b) all fell to the ground.

Sgt. Walsh did not observe § 87(2)(b)'s face hit the ground or a subway grate. He did not know what part of § 87(2)(b)'s body made contact with the ground. Sgt. Walsh got on top of § 87(2)(b) and held his hands. § 87(2)(b) resisted arrest by rolling around, kicking his legs and attempting to get up. Sgt. Walsh maintained control of his hands and did nothing else in response to the resistance. § 87(2)(b) was handcuffed shortly after. Sgt. Walsh denied punching § 87(2)(b) in the face or hitting him in the face with an object.

Sgt. Walsh did not observe § 87(2)(b) bleeding at any point during the incident, but did observe a cut or scratch to his right eye hours later at the stationhouse. Sgt. Walsh did not know how this injury was caused.

PO Georgiou corroborated Sgt. Walsh's testimony that § 87(2)(b) initially refused to take his hands out of his pockets upon being stopped, but stated that § 87(2)(b) did not put forth any other type of resistance throughout the incident, contradicting Sgt. Walsh's testimony that § 87(2)(b) had put forth a high level of resistance. PO Georgiou noted that when he grabbed § 87(2)(b)'s left hand, which was digging in his pocket, he let go once Sgt. Walsh also grabbed that arm as § 87(2)(b) is a "small guy" and he did not think it was necessary for two officers to grab him. PO Georgiou, after methadone was spilled on him, was distracted as Sgt. Walsh took § 87(2)(b) to the ground and did not see how he did so or how § 87(2)(b) landed. PO Georgiou observed § 87(2)(b) bleeding from around his mouth when he was on the ground, but did not observe what caused this. PO Georgiou stated that he did not observe Sgt. Walsh punch § 87(2)(b) in the face or strike him in the face with an object. He also stated that § 87(2)(b) was not resisting arrest on the ground and that his only resistance was initially refusing to remove his hands from his pockets (encl. 21A-D).

Sgt. Puello stated that although he did not observe Sgt. Walsh take § 87(2)(b) to the ground, he observed § 87(2)(b) resisting arrest on the ground. Sgt. Puello continually stated that his back was turned throughout the incident and could not see anything, rendering his testimony on § 87(2)(b)'s alleged resistance less than credible. Sgt. Puello observed § 87(2)(b) bleeding from his face, but did not recall specifically where on his face. Sgt. Puello did not observe what caused the bleeding. Sgt. Puello did not observe Sgt. Walsh punch § 87(2)(b) in the face or strike him in the face with an object (encl. 18A-D).

All members of the service at the scene of a police incident must use the minimum amount of force necessary. NYPD Patrol Guide Procedure 203-11 (encl. 1L-M).

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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§ 87(2)(b) [REDACTED] remained consistent in his statements to FDNY personnel, hospital staff at § 87(2)(b) [REDACTED], the Internal Affairs Bureau and the CCRB that he was struck in the face by Sgt. Walsh, which was corroborated by § 87(2)(b) [REDACTED]. It was also confirmed that § 87(2)(b) [REDACTED] sustained two injuries during this incident, a black right eye and a cut to the right eyebrow which required sutures to close. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Team: _____

Investigator: _____
Signature _____ Print _____ Date _____

Supervisor: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
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